

the provisions of the BOA. When storage is terminated, the "handling-out" and post-storage services are accomplished by issuance of a GBL in accordance with the tender of service. The GBL may be issued to a different company or in some cases to the same company that stored the goods. These are long-term storage, long-distance moves processed under the authority of two documents: the initial service order and the GBL. Liability is assessed entirely against the delivering carrier at whatever rate is appropriate for the code of service involved, unless the carrier prepares an exception sheet (rider) noting damage or loss at the time the goods are picked up from the warehouse. The exception sheet must be signed by a warehouse representative. If a valid exception sheet exists, liability for items noted on the exception sheet is assessed against the NTS warehouse at \$50.00 per inventory line item. An exception sheet should be prepared by the GBL carrier who picks up the goods from NTS even if that carrier is the same company that stored the goods. This is necessary in order to relieve the carrier from liability as a carrier. If either the carrier alone, or both the carrier and the NTS facility, fail to pay their proper liability, the file is forwarded to the Naval Material Transportation Office, (NAVMTO), Norfolk, Virginia for offset action.

(f) *Direct Procurement Method (DPM).*

(1) A DPM move is a method in which the Government manages the shipment from origin to destination. Contracts are issued to commercial firms for packing, containerization, local drayage, and storage services, or Government facilities and employees provide these services. Separate arrangements are made with carriers and separate documents are issued for each segment throughout. DPM contractors are also known as packing and crating (P&C) contractors, as local drayage contractors, or just as local contractors.

(2) GBL's for DPM shipments are usually only issued to motor freight carriers.

(i) Block 3 on the GBL entitled "service code" will contain the letters A, B, H, or V, followed by a second letter A, H, K, N, P, R, W, X, or Y. These two

letter codes identify the GBL as a DPM contract.

(ii) Block 18, "consignee," and Block 19, "from," on the GBL contain the name and address of another carrier or transportation office rather than the name and address of the claimant.

(iii) Block 27, "description of shipment," on most GBL's contains the statement, "household goods released at a value of 10 cents per pound per article." This refers to the motor freight carrier's liability only. The origin and destination contractors' liability is still \$.60 per pound times the weight of the article or carton, as indicated in the Joint Military/Industry Table of Weights.

(iv) If liability lies against the motor freight carrier, the term "article" is defined as the weight of each packed item, such as the weight of a broken dish within a carton rather than the net weight of a carton, as used against the origin and destination contractors. Liability is computed against the motor freight carrier at a rate of \$.10 per pound times the weight of the article.

(3) Since 1 January 1981 the destination contractor has been held liable for loss and damage unless it can prove that it is not at fault, i.e., took exceptions prior to receipt of goods. The motor freight carrier is liable for any damage or loss noted against it during its portion of the move. If the motor freight carrier has noted specific damage when it received the shipment, liability is charged against the origin contractor at \$.60 per pound times the weight of the article or carton. Damage noted against the origin contractor or motor freight carrier should be indicated on a valid shipping document and generally involves distinct damage to or missing containers. These documents must be signed by all parties involved in the transfer of the goods.

(4) The destination contractor must receive timely notice of loss or damage via DD Form 1840/1840R and a demand packet. If exceptions were taken against the origin contractor or motor freight carrier on a transfer document, they should receive only demand packets.

(5) In determining destination or origin contractor's liability, the term "article" has been defined as each shipping carton or container and the contents thereof, less any exterior crate or shipping carton. The net weight of each article (carton or box) packed within the exterior crate or carton may be used to determine the contractor's liability for a damaged or missing item originating out of that carton.

(6) Claims offices should obtain a copy of the DPM contract from the local contracting office or transportation office in order to identify which company has the DPM contract and verify the limits of the liability clause. Contracts are awarded on a calendar-year basis.

(g) *Mobile homes.* Mobile home claims represent such a small percentage of claims received that claims personnel are often unfamiliar with the requirements and documentation necessary to process such claims. For an explanation of the adjudication of such claims and the forms used to effect shipment, see §751.12(g) above.

(1) *Carrier liability*—(i) *For damage to the mobile home.* Carrier liability for damage to a mobile home is generally the full cost of repairs for damage incurred during transit. A mobile home carrier is excused from liability when the carrier can introduce substantial proof that a latent structural defect (one not detectable during the carrier's preliminary inspection) caused the loss or damage.

(ii) *For damage to contents.* The carrier's liability for loss or damage to household or personal effects inside the mobile home (such as clothing and furniture, or furnishings which were not part of the mobile home at the time it was manufactured) is limited to \$250.00 unless a greater value is declared in writing on the GBL. Under the Mobile Home One-Time-Only (MOTO) rate system, effective for shipments after 1 November 1987 the owner no longer prepares his own inventory. Under the MOTO system, the carrier in coordination with the owner is required to prepare a legible descriptive inventory on DD Form 1412, Inventory of Articles Shipped in House Trailer.

(iii) *Agents of the mobile home carrier.* If the shipment is transferred to another

mobile home carrier for transport, the first carrier will continue to be shown on the GBL and is responsible for the mobile home from pickup to delivery. The carrier is also responsible for damage caused by third parties it engages to perform services such as auxiliary towing and wrecking.

(iv) *Water damage.* Water damage to a double-wide or expando-type mobile home is usually due to the carrier's failure to provide sufficient protection against an unexpected rainstorm. Carriers will often assert that this damage is due to an "act of God" and attempt to avoid liability. It is, however, the carrier's responsibility to ensure safe transit of the mobile home from origin to destination. Not only should carriers be aware of the risk of flash floods and storms in certain locales during certain seasons, but a carrier is supposed to provide protective covering over areas of the mobile home exposed to the elements. Carrier recovery should be pursued for water damage to these types of mobile homes.

(v) *Waivers signed by the claimant.* The carrier may attempt to escape liability by having the owner execute a waiver of liability. Such waivers are not binding upon the United States.

(vi) *Extensions of storage in transit (SIT).* The extension of SIT past 180 days is only applicable to household goods and holdbaggage shipments. It is not applicable to the shipment of mobile homes. If a mobile home remains in SIT past 180 days, storage is at the owner's expense.

(2) *Notice.* Item 306 of the carrier's rate solicitation states that: "Upon delivery by the carrier, all loss of or damage to the mobile home shall be noted on the delivery document, the inventory form, the DD Form 1800, and/or the DD Form 1840. Late(r) discovered loss or damage, including personal property within the mobile home, will be noted on DD Form 1840R not later than 75 days following delivery and shall be accepted by the carrier as overcoming the presumption of correctness of delivery receipt." Notification to the carrier may be made on any of the documents. Claims personnel will dispatch the DD Form 1840R in accordance with §751.14.

(3) *Preparation of demands.* The carrier is liable for the full amount of substantiated damage to the mobile home itself (less estimate fees), plus up to \$250.00 for loss or damage to contents (unless the claimant purchased increased released valuation on the contents). Prepare a demand for this amount. In addition to the DD Form 1843 and DD Form 1844, the demand packet should include the following documents:

- (i) DD Form 1800, Mobile Home Inspection Record;
- (ii) DD Form 1863, Assessorial Services, Mobile Home;
- (iii) DD Form 1840/1840R, Joint Statement of Loss or Damage at Delivery/Notice of Loss;
- (iv) DD Form 1412, Inventory of Items Shipped in House Trailer;
- (v) DD Form 1841, Government Inspection Report;
- (vi) Driver's statement, from the driver of the towing vehicle;
- (vii) Claimant's statement concerning previous moves;
- (viii) Estimates of repair, preferably two, from firms in the business of repairing mobile homes; and
- (ix) Engineer's statement, or statement by other qualified professionals.

(4) *References.* Chapter 3 and Appendix E of DOD 4500.34-R, pertain to mobile home shipment and contain much valuable information. Another source is NAVSUP 490, Chapter 10 "Mobile Homes of Military Personnel."

§ 751.26 Demand on carrier, contractor, or insurer.

(a) *Carrier.* When property is lost, damaged, or destroyed during shipment under a GBL pursuant to authorized travel orders, the claims investigating officer or adjudicating authority (whichever can more efficiently perform the task) shall file a written claim for reimbursement with the carrier according to the terms of the bill of lading or contract. This demand shall be made against the last carrier known to have handled the goods, unless the carrier in possession of the goods when the damage or loss occurred is known. In this event, the demand shall be made against the responsible carrier. If it is apparent the damage or loss is attributable to packing,

storing or handling while in the custody of the Government, no demand shall be made against the carrier.

(b) *Marine Corps claimants.* For Marine Corps claimants, the claims investigating officer will prepare the claim against the carrier, contractor, and/or insurer and will mail it (together with the DD Form 1842 claim package) to the Commandant of the Marine Corps (MHP-40), who will submit and assume the responsibility of monitoring the claim against the carrier.

(c) *NTS warehousemen.* Whenever property is lost, damaged, or destroyed while being stored under a basic agreement between the Government and the warehouseman, the claims investigating officer, or appropriate Naval Legal Service Command (NLSC) activity, shall file a written claim for reimbursement with the warehouseman under the terms of the storage agreement.

(d) *Insurer.* When the property lost, damaged, or destroyed is insured, the claimant must make a demand against the insurer for payment under the terms of the insurance coverage within the time provided in the policy. If the amount claimed is clearly less than the policy deductible, no demand need be made. Failure to pursue a claim against available insurance will result in reducing the amount paid on the claim by the amount which could have been recovered from the insurer. When an insurer makes a payment on a claim in which the Government has made a recovery against the carrier or contractor, the insurer shall be reimbursed a pro rated share of any money recovered.

§ 751.27 Preparation and dispatch of demand packets.

Demand on a carrier or contractor shall be made in writing on DD Form 1843 (Demand on Carrier) with a copy of the adjudicated DD Form 1844 (Schedule of Property) attached.

(a) *Demand packets.* A demand is a monetary claim against a carrier, contractor, or insurer, to compensate for loss or damage incurred to personal property during shipment or storage. DD Form 1843 represents the actual demand. The demand packet is a group of documents, stapled together and sent

to the liable third party. More than one demand packet should be prepared when more than one party is deemed to be liable. Do not use original documents. Demand packets should be mailed in official DON envelopes. No demand packet should be prepared for claim files that have been closed or when potential recovery is \$25.00 or less. In those cases the outside of file folders in the upper left-hand corner should be marked "CLOSED." A demand packet will include the following:

(1) DD Form 1843, Demand on Carrier/Contractor;

(2) DD Form 1844, Schedule of Property and Claim Analysis Chart;

(3) DD Form 1841, Government Inspection Report (if available);

(4) DD Form 1164, Service Order for Personal Property (when applicable);

(5) Copies of all repair estimates (translated from foreign languages); and

(6) Copies of all other supporting documents deemed appropriate.

(b) *Dispatch of demand packets.* (1) The demand packets are directly dispatched by the appropriate personal property office or the Naval Legal Service Office to the third party.

(2) *Privately Owned Vehicles (POV's).* Demands for loss or damage to POV's will not be made directly against ocean carriers operating under contract with the MSC. After payment is made to the claimant, one copy of the complete claim file will be forwarded directly to Commander, MSC. Each file shall include the following:

(i) The payment voucher;

(ii) The completed personnel claim forms;

(iii) The estimated or actual cost of repair;

(iv) A document indicating the conditions of the items upon delivery to the carrier; and

(v) a document indicating the forwarding condition of the POV upon its return to Government control.

The letter of transmittal should identify the vessel by name, number, and if available, the sailing date.

§ 751.28 Assignment of claimants rights to the government.

The claimant shall assign to the Government, to the extent of any payment made on the claim, all rights and interest the claimant may have against any contractor, carrier, or insurer or other party arising out of the incident on which the claim is based. The claimant shall also furnish such evidence as may be required to enable the Government to enforce its claim. If the claimant refuses to cooperate, steps may be taken to ensure return of monies paid on the item which the Government is trying to collect.

§ 751.29 Recoveries from carrier, contractor, or insurer.

(a) *Recoveries.* If a claimant receives payment from the Government under this instruction and also receives compensation from a carrier, contractor, or insurer for the same loss, the Government shall collect from the claimant the amount necessary to prevent the claimant from being compensated twice for the same loss. If the amount payable on a claim is less than the adjudicated value of the claim, excess recoveries from carriers, and other third parties shall be paid to the member as long as the total amount paid does not exceed the value of the claim as adjudicated.

(b) *Recovered property.* When lost property is found, the claimant may, at his option, accept all or part of the property and return the full payment or a pro-rated share of the payment received from the Government on the claim for the recovered property. Surrendered property shall be disposed of under applicable salvage and disposal procedures.

§ 751.30 Settlement procedures and third party responses.

(a) *Settlement procedures.* In the interest of expeditious office administration, correspondence to carriers and contractors should be kept to a minimum. Normally, one rebuttal to a third party's denial of liability is sufficient, unless the carrier or contractor raises new arguments or provides new information.

(1) *Checks from third parties.* Accept checks for the amount demanded from

carriers and contractors. If a carrier or contractor forwards a check for less than the amount demanded, review the carrier's arguments for reducing liability to determine if they are acceptable. If the third party's basis for reducing liability is acceptable in the light of all evidence, deposit the check and dispatch the unearned freight letter, if applicable. Mark the front upper left-hand corner of the file as "CLOSED."

(2) *Third party offers of settlement.* If a carrier or contractor offers to settle the claim, review the carrier's arguments for reducing liability to determine if they are acceptable. If the third party's basis for reducing liability is acceptable in light of all evidence, inform the carrier that the offer is accepted, but that offset action will be initiated if a check for that amount is not received within 45 days. If a check in the amount acceptable to the Government is received, deposit it and dispatch the unearned freight letter, if applicable. Mark the front upper left-hand corner of the file as "CLOSED." If a check in the proper amount is not received within 45 days, send the request to NAVMTO, Norfolk (or appropriate contract officer) for offset action (see § 751.32 of this part).

(3) *Unacceptable third party checks and offers of settlement.* If a third party's basis for denying liability is not valid, respond to that carrier or contractor. Return unacceptable checks. Explain the reasons for not accepting the check or offer, and request the amount that is justified under the circumstances in the light of all the evidence. If a release was included, amend the release to the revised amount and sign, date, witness, and return it. Warn the carrier or contractor that the claim will be forwarded for offset action if a check for the amount justified under the circumstances is not received within 45 days. Suspend the file for 45 days and if a check in the proper amount is received, deposit it and dispatch the unearned freight letter, if applicable. If a check in the proper amount is not received within 45 days, request NAVMTO, Norfolk (or appropriate contract officer) to take offset action.

(4) *Third party denials of liability.* Upon receipt, review the carrier or con-

tractor's basis for denying liability in the light of all the evidence.

(i) *Acceptable third party reasons for denial.* Mark the front upper left-hand corner of such files as "CLOSED."

(ii) *Partially acceptable and unacceptable third party reasons for denial.* If the carrier or contractor's basis for denying liability is acceptable only in part or is completely unacceptable, follow the procedures in subparagraph (3) above, requesting the amount that is justified under the circumstances in the light of all the evidence. If a response is not received within 45 days, or if the third party's reply is not responsive, request NAVMTO, Norfolk (or appropriate contract officer) take offset action as described above.

(b) *Depreciation.* In determining payments to claimants, the depreciation rates from the Allowance List—Depreciation Guide are used. In determining third party liability, however, a different depreciation guide, the Joint Military/Industry Depreciation Guide is used instead. In most instances, the depreciation rates are the same in both guides, and claims personnel are not required to consult the Joint Military/Industry Depreciation Guide or alter the depreciation taken on items prior to dispatching demands. If, however, a carrier or contractor objects to the depreciation rate utilized for certain items, consult the Joint Military/Industry Depreciation Guide and use the depreciation rate found in that guide if it differs from the rate in the Allowance List—Depreciation Guide.

§ 751.31 Common reasons for denial by carrier or contractor.

The following are common reasons given for denial of an entire claim, or for individual items on a claim. Each reason for denial is followed by a short discussion of the validity of such a denial.

(a) *The carrier alleges that valid exceptions were made at the time of pickup from the NTS facility.* When a carrier provides an exception sheet it contends was made at time of transfer, this exception sheet must bear the signature of a representative of the NTS facility. Without a signed exception sheet there is no evidence that the NTS facility was made aware of these exceptions

and given the opportunity to confirm or deny the alleged condition of the items in question. The burden of proof is on the carrier to provide the valid exception sheet and establish its freedom from liability.

(b) *The carrier denies liability for missing or damaged item packed in cartons because it did not pack the shipment and the cartons did not show outside damage.* When a carrier accepts a shipment in apparent good order, it is responsible for damage to packed items, unless it can prove that the packing was improper and was the sole cause of the damage.

(c) *The carrier contends that the mildew damage occurred in NTS and not during its transport of the shipment.* Mildew formation is more likely to occur in NTS than in transport. Unsupported by evidence, however, an allegation that mildew formation occurred during NTS does not rebut the established prima facie case of a carrier liability. A carrier must prepare an exception sheet and note any mold or mildew damage when the items were picked up from the NTS facility. The burden of proof is on the carrier to show that it was free from negligence and that the damage was due solely to the formation of mildew or mold during the NTS storage.

(d) *The carrier claims that damage is due to "inherent vice."* Although the carrier may allege that damage was due to "inherent vice," the mere allegation of "inherent vice" is insufficient to relieve the carrier of liability. The burden of proof is on the carrier to establish that an "inherent vice" existed and that it was the sole cause of the damage claimed. Since the carrier can rarely establish this burden of proof, denial due to "inherent vice" is seldom acceptable.

(e) *The carrier contends that it was denied the right to inspect.* Often a carrier will state that it made several attempts to make an inspection, but the shipper failed to keep the appointment. If such a case exists, the proper procedure for the carrier to follow is to contact the claims office for assistance in accomplishing the inspection within a timely manner. A carrier's efforts to obtain the inspection should be documented in the file by claims personnel. Lack of an inspection alone, however,

does not relieve the carrier of liability and is insufficient to rebut a well-established prima facie case of liability.

(f) *The carrier denies liability on missing items because the items do not appear on the new inventory made at pickup from the NTS facility.* When a carrier picks up a shipment from NTS and chooses to prepare a new inventory, it must use identical or cross-referenced numbers. If an article such as a chair or a lawnmower is missing, it must be indicated as "missing" on the new inventory. Whether or not a new inventory is made, an exception sheet must be prepared and the missing articles must be noted thereon. To relieve the carrier of liability, both the new inventory and the exception sheet must be signed by representatives of the NTS facility and the carrier.

(g) *The carrier denies liability due to "act of God."* An act of God is an event that could not have been prevented by human prudence. It is generally seen as an occurrence in which human skill or watchfulness could not have foreseen the disaster. The burden of proof is on the carrier to establish that an "act of God" existed and that it was the sole cause of the damage claimed. Since the carrier can rarely establish this burden of proof, denial due to an "act of God" is generally not acceptable. The carrier cannot avoid liability if it has been negligent in exposing the goods to potential danger or if it failed to take reasonable steps to reduce the extent of the injury once the danger was discovered.

(h) *The carrier contends that the claimant's repair estimate is excessive and that its own repair firm can do the job cheaper.* A claimant has the right to select a repair firm provided the cost is reasonable and not in excess of the item's value. The carrier is liable for the reasonable cost of repairing damaged merchandise that includes labor, material, overhead, and other incidental expenses incurred in reconditioning or putting the goods in salable condition. If the carrier did not provide the claims office with an acceptable, lower estimate to use in adjudicating the claim, and if the claimant's estimate is reasonable, then the carrier is liable for the amount paid the claimant.